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REMARKS

This is a full and timely response to the outstanding Office action mailed February 2, 2006. Upon entry of the amendments in this response claims 65-66 and 68-84 are pending. More specifically, claims 65, 72, and 79 are amended. These amendments are specifically described hereinafter.

I. Present Status of Patent Application

Claims 72-74 and 79-81 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by *Wasilewski* (U.S. 5,420,866). Claims 65-66 and 68-71 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Bestler, et al* (U.S. 5,231,664) in view of *Wasilewski* (U.S. 5,420,866). Claims 75 and 76 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Wasilewski* (U.S. 5,420,866) in view of *Chaney* (U.S. 6,035,037). Claims 77-78 and 82-84 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Wasilewski* (U.S. 5,420,866). These rejections are respectfully traversed.

II. Rejections Under 35 U.S.C. §102(b)

A. Claims 72-74

The Office Action rejects claims 72-74 under 35 U.S.C. §102(b) as allegedly being anticipated by *Wasilewski* (U.S. Patent No. 5,420,866). For at least the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 72 as amended recites:

72. A method of providing a terminal in a conditional access system with services, the method comprising the steps of:

*associating services with entitlement unit numbers, an entitlement unit number
corresponding to a particular package of bundled services;*

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providing the terminal with an electronic program guide that associates universal service identification numbers to services;
providing the terminal with an entitlement unit table that translates universal service identification numbers to entitlement unit numbers; and
providing the terminal with an authorized entitlement unit number, wherein responsive to the a user selecting a given service, the terminal determines whether the terminal is authorized to access the given service using the electronic program guide, the entitlement unit table, and the authorized entitlement unit number.
(Emphasis added).

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988). Applicant respectfully submits that independent claim 72 is allowable for at least the reason that *Wasilewski* does not disclose, teach, or suggest at least **associating services with entitlement unit numbers, an entitlement unit number corresponding to a particular package of bundled services.**

As defined in the specification, in at least one embodiment, an entitlement unit is a package of bundled services. *See Application*, page 1, line 15. An entitlement unit number, therefore, may be a number that identifies a particular bundle. The Office Action alleges that “*Wasilewski* discloses several numbers in his invention which read on entitlement unit numbers.” *See Office Action*, page 3. The alleged numbers all relate to the program identifier (PID). However, a PID, as one of ordinary skill in the art would recognize, is associated with a single program and does not relate to a particular package of bundled services, as claimed.

The Office Action also alleges that “[w]ithout the EMM’s and ECM’s and the information they contain a service is not usable, thus the EMM’s and ECM’s having PID’s reads on ‘associates services with entitlement unit numbers.’” *See Office Action*, page 3. Applicant respectfully submits that an assertion that an EMM or ECM is necessary for a usable service is unrelated to the issue of whether a PID in the ECM or EMM discloses the entitlement unit

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number. Thus, Applicant respectfully submits that a PID in an ECM or EMM does not disclose “associating services with entitlement unit numbers, an entitlement unit number corresponding to a particular package of bundled services” as recited in claim 72.

The Office Action further concludes that the authorized entitlement unit number is “inherent to *Wasilewski* because the limitation as recited is too broad considering applicant never explicitly defined ‘entitlement unit number’ in the specification.” See *Office Action*, page 3. Even assuming arguendo, that an “entitlement unit number” is not specifically defined in the specification, it does not necessarily follow that the term is too broad.

Support for the amended claim language may be found in at least one embodiment in the specification, beginning with the definition of entitlement units found on page one of the specification, where packages of bundled services are called entitlement units. See *Specification*, page 1, line 15. Indeed, the field of the disclosure includes the “identification of packages of bundled services, called entitlement units, and the authorization of reception of an entire entitlement unit.” Applicant respectfully submits that one of ordinary skill in the art would understand that given that an entitlement unit is a package of bundled services, an entitlement unit number would identify a particular entitlement unit and that that number may be used for the authorization of reception of an entitlement unit.

This understanding is enforced by subsequent passages such as “For example, a first entitlement unit may include both HBO and Cinemax, whereas a second entitlement unit may include only HBO. The entitlement control message for the HBO service (i.e., HBO data stream) would include both the first and second entitlement unit numbers.” See *Specification*, page 6, lines 8-12. From this passage, it is evident that a first entitlement unit number designates a first bundle of services including both HBO and Cinemax, and a second entitlement unit number designates a second bundle of services including only HBO. Applicant respectfully asserts that a PID is inconsistent with the entitlement unit element as claimed.

Therefore, since *Wasilewski* does not disclose an entitlement unit number as claimed, *Wasilewski* does not anticipate independent claim 72, and the rejection should be withdrawn.

Because independent claim 72 as amended is allowable over the cited references of record, dependent claims 73 and 74 (which depend from independent claim 72) are allowable as

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a matter of law for at least the reason that dependent claims 73 and 74 contain all the steps/features of independent claim 72. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 73 and 74 are patentable over *Wasilewski*, the rejection to claims 73 and 74 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 72, dependent claims 73 and 74 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the cited references of record. Hence there are other reasons why dependent claims 73 and 74 are allowable.

B. Claims 79-81

The Office Action rejects claims 79-81 under 35 U.S.C. §102(b) as allegedly being anticipated by *Wasilewski* (U.S. Patent No. 5,420,866). For at least the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 79 as amended recites:

79. A method of providing a service to a terminal in a conditional access system, the method implemented at the terminal and comprising the steps of:

receiving an electronic program guide that associates universal service identification numbers to services;

receiving an entitlement unit table that translates universal service identification numbers to entitlement unit numbers, an entitlement unit number corresponding to a particular package of bundled services;

receiving an authorized entitlement unit number;

receiving user input for a given service; and

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determining whether the terminal is authorized to access the given service using the electronic program guide, the entitlement unit table, and the authorized entitlement unit number.

(Emphasis added).

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue.

Applicant respectfully submits that independent claim 79 is allowable for at least the reason that *Wasilewski* does not disclose, teach, or suggest at least **receiving an entitlement unit table that translates universal service identification numbers to entitlement unit numbers, an entitlement unit number corresponding to a particular package of bundled services.**

As defined in the specification, in at least one embodiment, an entitlement unit is a package of bundled services. See *Application*, page 1, line 15. An entitlement unit number, therefore, may be a number that identifies a particular bundle. The Office Action alleges that “*Wasilewski* discloses several numbers in his invention which read on entitlement unit numbers.” See Office Action, page 3. The alleged numbers all relate to the program identifier (PID). However, a PID, as one of ordinary skill in the art would recognize, is associated with a single program and does not relate to a particular package of bundled services, as claimed.

The Office Action also alleges that “[w]ithout the EMM’s and ECM’s and the information they contain a service is not usable, thus the EMM’s and ECM’s having PID’s reads on ‘associates services with entitlement unit numbers.’” See Office Action, page 3. Applicant respectfully submits that an assertion that an EMM or ECM is necessary for a usable service is unrelated to the issue of whether a PID in the ECM or EMM discloses the entitlement unit number. Thus, Applicant respectfully submits that a PID in an ECM or EMM does not disclose “receiving an entitlement unit table that translates universal service identification numbers to entitlement unit numbers, an entitlement unit number corresponding to a particular package of bundled services” as recited in claim 79.

The Office Action further concludes that the authorized entitlement unit number is “inherent to *Wasilewski* because the limitation as recited is too broad considering applicant never

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explicitly defined 'entitlement unit number' in the specification." See *Office Action*, page 3. Even assuming arguendo, that an "entitlement unit number" is not specifically defined in the specification, it does not necessarily follow that the term is too broad.

Support for the amended claim language may be found in at least one embodiment in the specification, beginning with the definition of entitlement units found on page one of the specification, where packages of bundled services are called entitlement units. See *Specification*, page 1, line 15. Indeed, the field of the disclosure includes the "identification of packages of bundled services, called entitlement units, and the authorization of reception of an entire entitlement unit." Applicant respectfully submits that one of ordinary skill in the art would understand that given that an entitlement unit is a package of bundled services, an entitlement unit number would identify a particular entitlement unit and that that number may be used for the authorization of reception of an entitlement unit.

This understanding is enforced by subsequent passages such as "For example, a first entitlement unit may include both HBO and Cinemax, whereas a second entitlement unit may include only HBO. The entitlement control message for the HBO service (i.e., HBO data stream) would include both the first and second entitlement unit numbers." See *Specification*, page 6, lines 8-12. From this passage, it is evident that a first entitlement unit number designates a first bundle of services including both HBO and Cinemax, and a second entitlement unit number designates a second bundle of services including only HBO. Applicant respectfully asserts that a PID is inconsistent with the entitlement unit element as claimed.

Therefore, since *Wasilewski* does not disclose an entitlement unit number as claimed, *Wasilewski* does not anticipate independent claim 79, and the rejection should be withdrawn.

Because independent claim 79 is allowable over the cited references of record, dependent claims 80 and 81 (which depend from independent claim 79) are allowable as a matter of law for at least the reason that dependent claims 80 and 81 contain all the steps/features of independent claim 79. Therefore, since dependent claims 80 and 81 are patentable over *Wasilewski*, the rejection to claims 80 and 81 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 79, dependent claims 80 and 81 recite further features and/or combinations of features, as

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are apparent by examination of the claims themselves, that are patently distinct from the cited references of record. Hence there are other reasons why dependent claims 80 and 81 are allowable.

III. Rejections Under 35 U.S.C. §103(a)

A. Claims 65, 66, and 68-71

The Office Action rejects claims 65, 66, and 68-71 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Bestler, et al* (U.S. Patent No. 5,231,664) in view of *Wasilewski* (U.S. Patent No. 5,420,866). For at least the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 65 as amended recites:

65. A method of providing a first service in a conditional access system, the method implemented in a terminal and comprising the steps of:
receiving a stream of packets, the stream of packets including packets comprising the first service and entitlement control messages (ECMs) for the first service;
determining a first entitlement unit number for the first service, an entitlement unit number corresponding to a particular package of bundled services;
determining whether the terminal is authorized to access the first service based upon the first entitlement unit number and an authorized entitlement unit number that is stored in a memory of the terminal; and
responsive to determining the terminal is not authorized, displaying a second service that is different from the first service.

(Emphasis added).

For a proper rejection of a claim under 35 U.S.C. §103, the cited combination of references must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988) and *In re Keller*, 208 U.S.P.Q.2d 871,

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881 (C.C.P.A. 1981). Applicant respectfully submits that independent claim 65 is allowable for at least the reason that the combination of *Bestler* and *Wasilewski* does not disclose, teach, or suggest at least **determining a first entitlement unit number for the first service, an entitlement unit number corresponding to a particular package of bundled services.**

1. Entitlement Unit Number not Disclosed, Taught, or Suggested

As defined in the specification, in at least one embodiment, an entitlement unit is a package of bundled services. See *Application*, page 1, line 15. An entitlement unit number, therefore, may be a number that identifies a particular bundle. The Office Action alleges that “*Wasilewski* discloses several numbers in his invention which read on entitlement unit numbers.” See Office Action, page 3. The alleged numbers all relate to the program identifier (PID). However, a PID, as one of ordinary skill in the art would recognize, is associated with a single program and does not relate to a particular package of bundled services, as claimed.

The Office Action also alleges that “[w]ithout the EMM’s and ECM’s and the information they contain a service is not usable, thus the EMM’s and ECM’s having PID’s reads on ‘associates services with entitlement unit numbers.’” See Office Action, page 3. Applicant respectfully submits that an assertion that an EMM or ECM is necessary for a usable service is unrelated to the issue of whether a PID in the ECM or EMM discloses the entitlement unit number. Thus, Applicant respectfully submits that a PID in an ECM or EMM does not disclose “determining a first entitlement unit number for the first service, an entitlement unit number corresponding to a particular package of bundled services” as recited in claim 65.

The Office Action further concludes that the authorized entitlement unit number is “inherent to *Wasilewski* because the limitation as recited is too broad considering applicant never explicitly defined ‘entitlement unit number’ in the specification.” See *Office Action*, page 3. Even assuming arguendo, that an “entitlement unit number” is not specifically defined in the specification, it does not necessarily follow that the term is too broad.

Support for the amended claim language may be found in at least one embodiment in the specification, beginning with the definition of entitlement units found on page one of the specification, where packages of bundled services are called entitlement units. See *Specification*,

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page 1, line 15. Indeed, the field of the disclosure includes the "identification of packages of bundled services, called entitlement units, and the authorization of reception of an entire entitlement unit." Applicant respectfully submits that one of ordinary skill in the art would understand that given that an entitlement unit is a package of bundled services, an entitlement unit number would identify a particular entitlement unit and that that number may be used for the authorization of reception of an entitlement unit.

This understanding is enforced by subsequent passages such as "For example, a first entitlement unit may include both HBO and Cinemax, whereas a second entitlement unit may include only HBO. The entitlement control message for the HBO service (i.e., HBO data stream) would include both the first and second entitlement unit numbers." See *Specification*, page 6, lines 8-12. From this passage, it is evident that a first entitlement unit number designates a first bundle of services including both HBO and Cinemax, and a second entitlement unit number designates a second bundle of services including only HBO. Applicant respectfully asserts that a PID is inconsistent with the entitlement unit element as claimed. *Bestler* does not overcome this deficiency.

Therefore, since the combination of *Bestler* and *Wasilewski* does not disclose an entitlement unit number as claimed, the combination does not anticipate independent claim 65, and the rejection should be withdrawn.

2. Motivation for Combination of *Bestler* and *Wasilewski*

Moreover, *Bestler* discloses an analog cable system, and *Wasilewski* discloses a digital cable system. One of ordinary skill in the art understands that the two systems cannot work integrally. They may work side by side, but sections of a digital system cannot simply be inserted, or combined, with sections of an analog system. Therefore, it would not have been obvious to, and there is no motivation for one of ordinary skill in the art to combine the teachings of *Bestler* with the teachings of *Wasilewski*. Therefore, the combination of *Bestler* and *Wasilewski* is improper, and, for this reason alone, the rejection should be withdrawn, and the claim allowed.

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3. **Receiving A Stream Of Packets, The Stream Of Packets Including Packets Comprising The First Service not Disclosed, Taught, or Suggested**

Additionally, Applicant respectfully renews the previous objection to the assertion that the combination of *Bestler* and *Wasilewski* discloses *receiving a stream of packets, the stream of packets including packets comprising the first service*. The Office Action states, “*Bestler* discloses ... 1. Receiving a stream of packets, the stream of packets including packets comprising the first service (col 5, lines 45-54 and col. 7, lines 50-52).” See *Office Action*, page 10. Applicant respectfully submits that this element is not taught by *Bestler*, as alleged in the Office Action. Even assuming, arguendo, that *Bestler* discloses an analog cable system with a message packet inserted in the vertical blanking interval of the program signals, there is no teaching of a stream of packets comprising a service.

Bestler states, at most:

a typical headend system provides a substantial number of television programs at different channel frequencies upon the cable system. Accordingly, program source 21, encoder 22, and scrambler 23 function in the same manner as program source 11 encoder 12 and scrambler 13 to provide a scrambled program source signal having the appropriate message packet inserted during the vertical blanking interval. Channel modulator 24 modulates this scrambled signal upon a carrier frequency different from channel modulator 14 and applies it to cable 15. Similarly, the remaining program sources such as program source 31 and their respective encoders and scramblers such as encoder 32 and scrambler 33 operate to provide additional scrambled program signals which are modulated upon individual carriers by their respective channel modulators such as modulator 34.

See *Bestler*, col. 4, lines 40-56.

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This describes an analog cable system which transmits an analog signal corresponding to the service. It fails to disclose a stream of packets, the stream of packets including packets comprising the first service. Therefore *Bestler* does not disclose this element as alleged in the Office Action. The Office Action alleges that “[t]his limitation was rejected using the combination teaching of *Bestler* and *Wasilewski*.” See *Office Action*, page 4. However, Applicant respectfully submits that even if the claim, as a whole, was rejected using a combination of *Bestler* and *Wasilewski*, this particular element was rejected based on *Bestler* alone. No evidence of this claim element was submitted as taught by *Wasilewski*. Therefore, the element was not rejected using a combination, and the argument presented in the previous Response stands. Since all the elements that the Office Action alleges are disclosed by *Bestler* are for services that are comprised of packets, and since *Bestler* discloses an analog system, none of the elements are disclosed by *Bestler*. *Wasilewski* does not cure all these deficiencies.

As the cited combination of references does not properly disclose, teach, or suggest, either implicitly or explicitly, all the elements of claim 65, the rejection should be withdrawn. Additionally and notwithstanding the analysis hereinabove, there are other reasons why claim 65 is allowable.

Because independent claim 65 is allowable over the cited references of record, dependent claims 66 and 68-71 (which depend from independent claim 65) are allowable as a matter of law for at least the reason that dependent claims 66 and 68-71 contain all the steps/features of independent claim 65. Therefore, the rejection to claims 66 and 68-71 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 65, dependent claims 66 and 68-71 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the cited references of record. Hence there are other reasons why dependent claims 66 and 68-71 are allowable.

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B. Claims 75-78

The Office Action rejects claims 75-78 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Wasilewski* (U.S. Patent No. 5,420,866) in view of *Chaney* (U.S. Patent No. 6,035,037). For at least the reasons set forth below, Applicant respectfully traverses the rejection.

Because independent claim 72 is allowable over the cited references of record, dependent claims 75-78 (which depend from independent claim 72) are allowable as a matter of law for at least the reason that dependent claims 75-78 contain all the steps/features of independent claim 72. Therefore, the rejection to claims 75-78 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 72, dependent claims 75-78 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the cited references of record. Hence there are other reasons why dependent claims 75-78 are allowable.

Additionally, with regard to the rejection of claims 75-78, *Chaney* does not make up for the deficiencies of *Wasilewski* noted above. Therefore, claims 75-78 are considered patentable over any combination of these documents.

Regarding claims 77 and 78, the Office action has included a conclusion that “the choice of how to send the entitlement unit numbers to a given terminal is an arbitrary [design] choice.” See *Office Action*, pages 15-16. The assertion that something is a design choice is insufficient to establish a “suggestion” in the art for the claimed elements. See e.g., *Northern Telecom, Inc. v. Data Point Corp.*, 15 U.S.P.Q. 2d 1321, 1323 (Fed. Cir. 1990). Also, as set forth by the Board of Patent Appeals and Interferences, the statement that something is an arbitrary or design choice is a conclusion and not a reason. *Ex Parte Garrett*, 1986 Pat. App. LEXIS 8 (Bd. Pat. App. Intrf. 1986). The Office Action has concluded that the entitlement unit number could be sent “either in an entitlement control message or as a separate EMM” because “[a]s long as the terminal obtains the entitlement unit number, it is able to compare the received number with the stored authorized unit number to see if the terminal is authorized to access the given service.” See *Office Action*, pages 15-16. However, there could be any number of reasons to send the entitlement numbers by different methods, including, but not limited to, speed and reliability. Since the Office Action has not provided sufficient motivation for the claimed element nor provided a reference showing the

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elements of claims 77 and 78, the Office Action has not established a *prima facie* case of obviousness and the rejection should be withdrawn.

C. Claims 82-84

The Office Action rejects claims 82-84 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Wasilewski* (U.S. Patent No. 5,420,866). For at least the reasons set forth below, Applicant respectfully traverses the rejection.

Because independent claim 79 is allowable over the cited references of record, dependent claims 82-84 (which depend from independent claim 79) are allowable as a matter of law for at least the reason that dependent claims 82-84 contain all the steps/features of independent claim 79. Therefore, the rejection to claims 82-84 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 79, dependent claims 82-84 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the cited references of record. Hence there are other reasons why dependent claims 82-84 are allowable.

Regarding claims 83 and 84, the Office action has included a conclusion that “the choice of how to send the entitlement unit numbers to a given terminal is an arbitrary [design] choice.” See *Office Action*, page 18. The assertion that something is a design choice is insufficient to establish a “suggestion” in the art for the claimed elements. See e.g., *Northern Telecom, Inc. v. Data Point Corp.*, 15 U.S.P.Q. 2d 1321, 1323 (Fed. Cir. 1990). Also, as set forth by the Board of Patent Appeals and Interferences, the statement that something is an arbitrary or design choice is a conclusion and not a reason. *Ex Parte Garrett*, 1986 Pat. App. LEXIS 8 (Bd. Pat. App. Infr. 1986). The Office Action has concluded that the entitlement unit number could be sent “either in an entitlement control message or as a separate EMM” because “[a]s long as the terminal obtains the entitlement unit number, it is able to compare the received number with the stored authorized unit number to see if the terminal is authorized to access the given service.” See *Office Action*, pages 15-16. However, there could be any number of reasons to send the entitlement numbers by different methods, including, but not limited to, speed and reliability. Since the Office Action has not provided sufficient motivation for the claimed element nor provided a reference showing the

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elements of claims 83 and 84, the Office Action has not established a *prima facie* case of obviousness and the rejection should be withdrawn.

IV. Miscellaneous Issues

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known for at least the specific and particular reason that the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

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CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 65-66 and 68-84 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,


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